

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:) Case No. 10-22085
)
Michael J. Miller,) Judge Arthur I. Harris
)
Debtor.) Chapter 7 Case

**MOTION OF DEBTOR TO DETERMINE
PROPERTY OF THE ESTATE**

Michael J. Miller, the debtor in this case, by and through his counsel, respectfully moves the Court for the entry of an Order, pursuant to §541(a) of the Bankruptcy Code, determining what portion of the joint federal income tax refund received by the debtor and his spouse is property of this estate and, in support of this motion, states as follows:

1. This case was commenced by the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on December 14, 2010. Waldemar J. Wojcik is the duly appointed, qualified and acting trustee in this case.

2. The only asset of this estate is the debtor's interest in a federal income tax refund jointly received by him and his non-debtor spouse in the amount of \$14,965.00 (the "Tax Refund"). The relevant portion of a redacted copy of the joint Form 1040 for the calendar year 2010 is attached as Exhibit A and incorporated herein by reference. A redacted copy of each party's 2010 Form W-2 is attached hereto as Exhibit B and incorporated herein by reference.

3. The issue for determination by this Court relates to the proper calculation of the allocation of the Tax Refund between the estate and the debtor's spouse.

4. In the first instance, the determination of whether a debtor has an interest in a tax refund is a function of state law. *Butner v. United States*, 99 S. Ct. 914, 917-18 (1979); *In re Taylor*, 22 B. R. 888 (Bankr. N.D. OH 1982). *See also, In re Thomas*, Case No. 09-36747 (Bankr. N.D. OH, 2010, *unreported*) [a copy of the opinion in this case is attached hereto as Exhibit C for the convenience of the Court.

5. The facts in each of these cases are simple. A joint income tax return was filed by a debtor and his/her non-debtor spouse. One of the parties did not work and did not financially contribute to the refund. The Courts held that, under Ohio law, when a refund derives solely from one debtor's or spouse's income, the other party to the joint tax return has no property interest in the refund.

6. It logically follows that when a refund derives from unequal withholdings from both parties, the property interest in the refund is allocated based upon the percentage contributions to the refund by each party. *See, e.g., In re Michael A. Smith*, 310 B.R. 320 (Bankr. N.D. OH 2004).

7. In the present case, the withholdings contributed by the debtor were \$2,171.92 and the withholdings contributed by his spouse were \$19,865.92.¹ The total withholdings were \$23,037.84, resulting in an allocation of approximately 9% of the refund to the debtor. Since the case was filed on December 14, 2010, 95% or \$14,216.00 of the refund is prepetition.

¹ As is recognized in the cited case law, this amount under any circumstances is solely the property of the non-debtor spouse.

Therefore, the debtor's prepetition interest in the joint refund which interest is property of the estate is \$1,279.50.

WHEREFORE, the debtor prays for an Order determining that \$1,279.50 of the joint 2010 federal income tax refund received by him and his non-debtor spouse is property of the estate pursuant to the provisions of §541(a) of the Bankruptcy Code.

/s/ David O. Simon

David O. Simon, #0006050
1370 Ontario Street, Suite 450
Cleveland, OH 44113-1744
(216) 621-6201; Fax: (216) 575-1405
dsimon@epiqtrustee.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Motion of Debtor to Determine Property of the Estate was electronically served upon Waldemar J. Wojcik, Trustee, this 15th day of April, 2011.

/s/ David O. Simon

David O. Simon

1040

Department of the Treasury—Internal Revenue Service

U.S. Individual Income Tax Return 2010

(99)

IRS Use Only—Do not write or staple in this space.

P R I N T C L E A R L Y	For the year Jan. 1-Dec. 31, 2010, or other tax year beginning 2010, ending 20		OMB No. 1545-0074
	Your first name and initial MICHAEL	Last name MILLER	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial KAREN	Last name MILLER	Spouse's social security number [REDACTED]
	Home address (number and street) If you have a P.O. box, see instructions 8336 SUMMIT DRIVE		Apt. no. Make sure the SSN(s) above <input type="checkbox"/> and on line 6c are correct.
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions CHAGRIN FALLS OH 44023		Checking a box below will not change your tax or refund.	

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund ☐ You ☐ Spouse

1 <input type="checkbox"/> Single	4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ◆
2 <input checked="" type="checkbox"/> Married filing jointly (even if only one had income)	5 <input type="checkbox"/> Qualifying widow(er) with dependent child
3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here. ◆	

6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a	Boxes checked on 8a and 6b
b <input checked="" type="checkbox"/> Spouse	No. of children on 6c who:

(1) First name		Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qual. child for child tax cr. (see page 15)

Total number of exemptions claimed ☐ Add numbers on lines above ☒ 2

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	121,433
8a	Taxable interest. Attach Schedule B if required	8a	
b	Tax-exempt interest. Do not include on line 8a	8b	
9a	Ordinary dividends. Attach Schedule B if required	9a	
b	Qualified dividends	9b	
10	Taxable refunds, credits, or offsets of state and local income taxes	10	261
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	0
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions	15a	
		b Taxable amount	
16a	Pensions and annuities	16a	
		b Taxable amount	7,400
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	-27,121
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits	20a	
		b Taxable amount	
21	Other income. List type and amount	21	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income ◆	22	101,973

23	Educator expenses	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ◆	31a	
32	IRA deduction	32	
33	Student loan interest deduction	33	
34	Tuition and fees. Attach Form 8917	34	
35	Domestic production activities deduction. Attach Form 8903	35	
36	Add lines 23 through 31a and 32 through 35	36	
37	Subtract line 36 from line 22. This is your	37	101,973

Act, and Paperwork Reduction Act Notice, see separate

THE OHIO LEGAL BLANK CO., INC.

EXHIBIT

A

Form 1040 (2010)

Tax and Credits

38	Amount from line 37 (adjusted gross income)	38	101,973
39a	Check <input type="checkbox"/> You were born before January 2, 1946, <input type="checkbox"/> Blind. <input type="checkbox"/> Total boxes checked <input type="checkbox"/> 39a		
	if: <input type="checkbox"/> Spouse was born before January 2, 1946, <input type="checkbox"/> Blind. <input type="checkbox"/> 39b		
b	If your spouse itemizes on a separate return or you were a dual-status alien, check here <input type="checkbox"/> 39b		
40	Itemized deductions (from Schedule A) or your standard deduction (see instructions)	40	27,052
41	Subtract line 40 from line 38	41	74,921
42	Exemptions. Multiply 53,650 by the number on line 6d	42	7,300
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	67,621
44	Tax (see instr.). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	44	9,306
45	Alternative minimum tax (see instructions). Attach Form 6251	45	
46	Add lines 44 and 45	46	9,306
47	Foreign tax credit. Attach Form 1116 if required	47	
48	Credit for child and dependent care expenses. Attach Form 2441	48	
49	Education credits from Form 8863, line 23	49	1,433
50	Retirement savings contributions credit. Attach Form 8880	50	
51	Child tax credit (see instructions)	51	
52	Residential energy credits. Attach Form 5695	52	
53	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	53	
54	Add lines 47 through 53. These are your total credits	54	1,433
55	Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-	55	7,873

Other Taxes

56	Self-employment tax. Attach Schedule SE	56	
57	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	57	
58	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	58	
59	a <input type="checkbox"/> Form(s) W-2, box 9 b <input type="checkbox"/> Schedule H c <input type="checkbox"/> Form 5405, line 16	59	
60	Add lines 55 through 59. This is your total tax	60	7,873

Payments

If you have a qualifying child, attach Schedule EIC.

61	Federal income tax withheld from Forms W-2 and 1099	61	22,038
62	2010 estimated tax payments and amount applied from 2009 return	62	
63	Making work pay credit. Attach Schedule M	63	800
64a	Earned Income credit (EIC)	64a	
b	Nontaxable combat pay election <input type="checkbox"/> 64b		
65	Additional child tax credit. Attach Form 8812	65	
66	American opportunity credit from Form 8863, line 14	66	
67	First-time homebuyer credit from Form 5405, line 10	67	
68	Amount paid with request for extension to file	68	
69	Excess social security and tier 1 RRTA tax withheld	69	
70	Credit for federal tax on fuels. Attach Form 4136	70	
71	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 8801 d <input type="checkbox"/> 8885	71	
72	Add lines 61, 62, 63, 64a, and 65 through 71. These are your total payments	72	22,838

Refund

Direct deposit? See instructions.

73	If line 72 is more than line 60, subtract line 60 from line 72. This is the amount you overpaid	73	14,965
74a	Amount of line 73 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/>	74a	14,965
b	Routing number XXXXXXXXXX	c	Type <input type="checkbox"/> Checking <input type="checkbox"/> Savings
d	Account number XXXXXXXXXXXXXXXXXXXX		
75	Amount of line 73 you want applied to your 2011 estimated tax	75	

Amount You Owe

76	Amount you owe. Subtract line 72 from line 60. For details on how to pay, see instructions	76	
77	Estimated tax penalty (see instructions)	77	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ Yes. Complete below. ☐ No

Designee's name Personal identification number (PIN) Phone no.

Sign Here

Joint return? See page 12. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
<i>[Signature]</i>		ELECTRICIAN	
Spouse's signature (If joint return, both must sign)	Date	Spouse's occupation	
<i>[Signature]</i>		EXECUTIVE	

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
ROBERT P. GROSS CPA	ROBERT P. GROSS CPA	02/25/11		P00704633
Firm's name	Firm's address	Firm's EIN	Phone no.	
Gross & Co, Inc	3681 Green Rd Ste 306 Cleveland		216-831-0011	

Form 1040 U.S. Individual Income Tax Return 2010

Department of the Treasury—Internal Revenue Service

(99)

IRS Use Only—Do not write or staple in this space.

Name, Address, and SSN

See separate instructions.

P R I N T C L E A R L Y	For the year Jan. 1-Dec. 31, 2010, or other tax year beginning 2010, ending 20		OMB No. 1545-0074
	Your first name and initial MICHAEL	Last name MILLER	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial KAREN	Last name MILLER	Spouse's social security number [REDACTED]
	Home address (number and street) If you have a P O box see instructions 8336 SUMMIT DRIVE		Apt. no. [REDACTED]
	City, town or post office, state, and ZIP code If you have a foreign address, see instructions CHAGRIN FALLS OH 44023		Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse

Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund ☐ You ☐ Spouse

Filing Status

1 <input type="checkbox"/> Single	4 <input type="checkbox"/> Head of household (with qualifying person) (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here.
2 <input checked="" type="checkbox"/> Married filing jointly (even if only one had income)	
3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here.	5 <input type="checkbox"/> Qualifying widow(er) with dependent child

Exemptions

6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a	Boxes checked on 6a and 6b No. of children on 8c who: <input type="checkbox"/> lived with you <input type="checkbox"/> did not live with
b <input checked="" type="checkbox"/> Spouse	
c Dependents:	

d Control No. 3242	1 Wages, tips, other compensation 96601.05	2 Federal income tax withheld 19865.92
e OMB No. 1545-0008	3 Social security wages	4 Social security tax withheld
	5 Medicare wages and tips 108221.36	6 Medicare tax withheld 1569.15

c Employer's name, address, and ZIP code CUYAHOGA COMMUNITY COLLEGE 700 CARNegie AVENUE CLEVELAND OH 44115-2878
--

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12 C 225.00
12b Code E 650.00	12c Code G 650.00	12d Code
b Employer identification number (EIN) 34-0896630	a Employee's social security number [REDACTED]	
13 Statutory empl.	Retirement plan X	14 Other RET SY 10320.31

e Employee's name, address, and ZIP code Karen C Miller 8336 Summit Dr Chagrin Falls, OH 44023

2010 38-2099803	15 State Employer's state ID number OH 512061987	16 State wages, tips, etc. 96601.05
W-2 Wage and Tax Statement Copy 2 - To Be Filed With Employee's State, City, or Local Income Tax Return.	17 State income tax 3687.31	18 Local wages, tips, etc. 108221.36
	19 Local income tax 2164.46	20 Locality name Cleveland

Department of the Treasury - Internal Revenue Service

negligence

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theld

theld

39.56

60.06

Suff.

09/27/10

ent

box 12

44.73

ie tax

isury - IRS

Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return.		2010 OMB No. 1545-0008
a Employee's SSN [REDACTED]	1 Wages, tips, other comp. 24831.60	2 Federal income tax withheld 2171.92
b Employer ID no. (EIN) 20-4654604	3 Social security wages 24831.60	4 Social security tax withheld 1539.56
	5 Medicare wages and tips 24831.60	6 Medicare tax withheld 360.06
c Employer's name, address, and ZIP code VIKING ELECTRICAL CONTRACTING, INC. 2434 HAMILTON AVE CLEVELAND OH 44114		
d Control number MILM	e Employee's name, address, and ZIP code MICHAEL MILLER 8336 SUMMIT DR CHAGRIN FALLS OH 44023	
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12
13 Statutory employee Retirement Plan	14 Other Union Du 1241.58	12b Code 12c Code 12d Code
Third-party sick pay		
OH	24831.60	844.73
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc. 24831.60	19 Local income tax 553.98	20 Locality name VAR

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

31a Alimony paid	b Recipient's SSN
32 IRA deduction	
33 Student loan interest deduction	
34 Tuition and fees. Attach Form 8917	
35 Domestic production activities deduction. Attach Form 8903	
36 Add lines 23 through 31a and 32 through 35	
37 Subtract line 36 from line 22. This is your tax refund or amount you owe.	

31a	
32	
33	
34	
35	
36	101,973
37	

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see DAA

THE OHIO LEGAL BLANK CO., INC.

EXHIBIT

B

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: April 27 2010

A handwritten signature in black ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple
United States Bankruptcy Judge

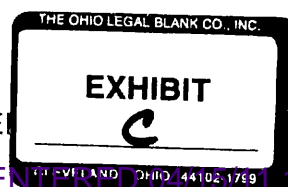
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 09-36747
)	
Phyllip R. Thomas and)	Chapter 7
Laura L. Thomas,)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF OPINION AND ORDER

This case is before the court on the Chapter 7 Trustee's Objection to Debtors' Claim of Exemption ("Objection") [Doc. # 17] and Debtors' response [Doc. # 24]. The Trustee objects to exemptions claimed by Debtor Laura Thomas in income tax refunds that Debtors anticipate for tax year 2009. The Objection presents the issue of whether a non-income producing debtor has a property interest in a tax refund presumably resulting from jointly filing an income tax return with her spouse as would entitle her to an exemption in that refund where the refund is the result of an adoption tax credit. The parties have stipulated to the facts relevant to the Trustee's Objection. [Doc. # 32]. For the reasons that follow, the court will sustain the Trustee's Objection.

The district court has jurisdiction over this Chapter 7 case pursuant to 28 U.S.C. § 1334(a) as a case under Title 11. It has been referred to this court by the district court under its general order of reference. 28 U.S.C. § 157(a); General Order 84-1 of the United States District Court for the Northern District of Ohio. A proceeding regarding exemptions from property of the estate is a core proceeding that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(B).



The facts, as stipulated, are as follows. Debtors filed a joint petition for relief under Chapter 7 of the Bankruptcy Code on September 30, 2009. Although they filed a joint petition as authorized by the Bankruptcy Code, 11 U.S.C. § 302, their estates have not been consolidated. *See In re Toland*, 346 B.R. 444, 449 (Bankr. N.D. Ohio 2006). Personal property listed on their bankruptcy Schedule B includes a 2009 income tax refund in an unknown amount. On Schedule C, Debtors claim exemptions in the tax refund under Ohio Revised Code §§ 2329.66(A)(3) and (18) in the amounts of \$411.62 and \$1,375.00, respectively. Only Phyllip Thomas earned any income during 2009. Laura Thomas was unemployed and had no income or other earnings during 2009. Debtors have two minor children, both of whom they adopted in 2008. They are entitled to an adoption tax credit for the tax year 2009 to the extent provided under 26 U.S.C. § 23. Although the parties do not state in their stipulation of facts that Debtors have filed or plan to file a joint income tax return, the court will assume that is the case for purposes of the Trustee's Objection.

LAW AND ANALYSIS

As authorized by 11 U.S.C. § 522(b)(2), the Ohio legislature opted out of the federal exemptions provided in § 522(d). *See* Ohio Rev. Code § 2329.662. As a result, debtors for whom the applicable exemption law under § 522(b)(3)(A) is Ohio law must claim exemptions under the relevant Ohio statutes and under applicable non-bankruptcy federal law. Ohio exemption law applies to Debtors as they have been domiciled in this state for more than the 730 days preceding the date of the filing of their petition. *See* 11 U.S.C. § 522(b)(3)(A); Doc. # 1, p. 27, SOFA question 15.

In this case, Debtor Laura Thomas ("Debtor") claims exemptions under Ohio Revised Code § 2329.66(A)(3) and (18) in any 2009 income tax refund that Debtors may receive. Under Ohio law, a person may exempt "[t]he person's interest, not to exceed four hundred dollars, in . . . tax refunds," Ohio Rev. Code § 2329.66(A)(3), as well as "the person's interest in any property not to exceed one thousand seventy-five dollars," Ohio Rev. Code § 2329.66(A)(18). In both instances, the Ohio exemption statute only provides for an exemption of "the person's interest" in property.

The tax refund anticipated by Debtors is, at least in part, due to an adoption tax credit to be taken on their 2009 federal income tax return. Laura Thomas argues that because she has contributed equally with her husband in adopting and caring for their two children, the fact that she had no income from which income taxes were withheld is not relevant to her ability to claim an exemption in any tax refund they might receive. The court disagrees.

The question that must be answered is whether Debtor has an interest in the tax refund. Whether a person has an interest in property is determined by applicable nonbankruptcy law, which, in this case, is

Ohio law. See *Butner v. United States*, 440 U.S. 48, 54-55 (1979). Ohio law, therefore, not federal tax law, determines a non-income producing spouse's property interest in an income tax refund.

Under Ohio law, subject to certain exceptions not applicable in this case, neither spouse "has any interest in the property of the other." Ohio Rev. Code § 3103.04; see *In re Toland*, 346 B.R. 444, 448 (Bankr. N.D. Ohio 2006)(court finds no basis to read the term "interest" in § 3103.04 as other than complementary to the term "interest" in § 2329.66). Thus, where an overpayment of a tax obligation results in a tax refund that derives solely from one debtor's income, courts applying Ohio law have found that the debtor's spouse has no property interest in the refund and is not entitled to an exemption. *In re Taylor*, 22 B.R. 888, 890-91 (Bankr. N.D. Ohio 1982); *In re Smith*, 77 B.R. 633, 635 (Bankr. N.D. Ohio 1987); *In re McEachern*, No. 04-23263, 2005 WL 2792369, *2, 2005 Bankr. LEXIS 2140, *4-5 (Bankr. N.D. Ohio Sept. 6, 2005); see *In re Smith*, 310 B.R. 320, 323-24 (Bankr. N.D. Ohio 2004). Courts have so found notwithstanding the fact that a joint return was filed and the refund check is made jointly payable to both the husband and wife. *In re Taylor*, 22 B.R. at 891; see *In re Smith*, 310 B.R. at 323 ("The fact that the checks name both Debtors as payees, and thus are not transferable without the working spouse's signature, does not alter the underlying property rights in any of the proceeds."); *United States v. Macphail*, 149 Fed. Appx. 449 (6th Cir. 2005) (finding in a non-bankruptcy context that "a joint income tax return does not create new property interests for the husband or the wife in each other's income tax overpayment"); *McClelland v. Massinga*, 786 F.2d 1205, 1210 (4th Cir. 1986) (same); cf. *In re Garbett*, 410 B.R. 280 (Bankr. E.D. Tenn. 2009) (finding that both spouses had an exemptible interest in a federal income tax refund where the trustee failed to rebut the presumption under Tennessee law that personal property acquired after marriage is held by both spouses as tenants by the entireties).

In *In re Taylor*, the court explained:

[T]he mere signing of a joint husband and wife tax return by the spouse with no income. . . for the purpose of taking advantage of perceived tax advantages, (does not thereby effect a) metamorphosis . . . converting the nature of the funds into the property of the other party.

Although joint federal tax filings are authorized by 26 U.S.C. Section 6013(a) of the Internal Revenue Code, 26 U.S.C. Section 6013(a) does not affect the ownership of property rights in the federal refund check proceeds. A basic purpose of 26 U.S.C. Section 6013(a) is to equalize the tax burden of married couples in common law and community property states. 26 U.S.C. Section 6013(a) does not propose, nor does it imply, that any property rights in the proceeds are altered by a joint federal income tax filing. . . . Similarly, O.R.C. Section 5711.-14, which permits the filing of joint Ohio tax returns, does not, by its own terms, alter property rights in any joint refunds, and this Court perceives no ground for so implying.

In re Taylor, 22 B.R. at 890.

The adoption credit allowed under 26 U.S.C. § 23 is a non-refundable credit, that is, it is limited by the amount of tax otherwise owed by the taxpayer and serves only to reduce that tax in determining the taxpayer's total tax liability. *See* 26 U.S.C. § 23(b)(4). Thus, applying the reasoning set forth above to this case, any income tax refund to be received by Debtors will be derived solely from withholding from the income of Phyllip Thomas such that Debtor has no property interest in the refund under Ohio law. Because the refund represents an overpayment of his tax obligation, it is a refund of Phyllip Thomas's wages, which are solely his property. Consequently, Debtor is not entitled to an exemption in the tax refund.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Chapter 7 Trustee's Objection to Exemption [Doc. # 17] be, and hereby is, **SUSTAINED**.